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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,660	06/21/2001	Tomiko Erickson	1.792.00	4747
7590	01/13/2004		EXAMINER	
MALLOY & MALLOY, P.A. Historic Coral Way 2800 S.W. Third Avenue Miami, FL 33129			VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/886,660	ERICKSON, TOMIKO
	Examiner Frank Vanaman	Art Unit 3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 21 October 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,4-8 and 10-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 4-8, and 10-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

### **Status of Application**

1. Applicant's amendment, filed October 21, 2003, has been entered in the application. Claims 1, 4-8, and 10-27 are pending, with claims 25-27 having been newly presented.

### **Claim Rejections 35 USC 103**

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.

3. Claims 1, 4-10, 13-15, 18, 19, 22-25, and 27 are rejected under 35 USC 103(a) as being unpatentable over Guggenheim (US 4,948,154) in view of Dismuke (US 5,195,778). Guggenheim teaches a cover (10) for a cart (12) forming an interior enclosure, including a top (14) and side wall (16, 18) formed from a protective material, the top overlying a top of the cart (12) the sidewall attached to the top and depending therefrom, the cover leaving an open bottom space to allow the cart to engage the ground, an access opening sized to correspond to the cart side, the opening closed by a closure drape (22, 24) selectively positionable to allow or disallow access, the drape and sidewall including connecting elements (28, 26) allowing the drape to be connected to the sidewall; the cover including portions which may be constructed from a nylon material, which is generally hypo-allergenic; the top portion, side walls, and drape portions including elongated reinforcements (see exemplary illustration, figure 6, which illustrates the reinforcements proximate the closure securement structure), along the periphery of each section, formed by thickened material portions (in this case, folded over and sewn portions), therein a reinforced perimeter extends outwardly from the exterior of the enclosure (see top of cart, and enclosure, figure 4). The reference to Guggenheim fails to teach at least a first compartment and second compartments to retain items.

Dismuke teaches a flexible covering device which includes a plurality of exterior compartments (8) for accommodating items associated with the use of the covering device. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a plurality of compartments as taught by Dismuke on the cover of

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Guggenheim for the purpose of allowing various miscellaneous items to be quickly stored and carried. As particularly regards the provision of compartments on the interior of the covering device, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide at least one of the compartments inside the covering device of Guggenheim in order that the contents of that compartment are afforded the benefit clearly taught by Guggenheim of being positioned in a more sterile environment. Note Guggenheim's discussion of the benefits of the preservation of a sterile environment on the interior of the covering device (e.g., col. 1, line 33 through col. 2, line 13).

The reference of Guggenheim as modified by Dismuke fails to teach the cover as being foldable. Inasmuch as the cover of Guggenheim is taught to be made from a flexible material, it would have been obvious to one of ordinary skill in the art at the time of the invention to allow the cover to be folded, for the purpose of allowing easy storage of the cover when it is not positioned on a cart.

4. Claims 11 and 12 are rejected under 35 USC 103(a) as being unpatentable over Guggenheim in view of Dismuke and Haberkorn (US 6,196,287). The references of Guggenheim and Dismuke are discussed above and fail to teach a further compartment connected to the exterior of the covering device and including a transparent window material. Haberkorn teaches a flexible covering device which includes a transparent windowed compartment (40) for the carrying of data or indicia describing the contents of the item accommodated in the interior of the covering device. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the covering device of Guggenheim as modified by Dismuke with a further transparent compartment for the purpose of allowing a document describing the contents of the cart to be carried with the cart and visible to the operator thereof.

5. Claims 16, 17, 20, 21 and 26 are rejected under 35 USC 103(a) as being unpatentable over Guggenheim in view of Dismuke and Franke (US 5,474,185). The references of Guggenheim and Dismuke are discussed above and fail to teach the

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periphery of the top as including pads which protect at least the corners of the top. Franke teaches a flexible cover which includes a top (2) and sides (2', 2''), wherein the top and side periphery are provided with a plurality of pads (3, 3') for protection. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the peripheral protective pads taught by Franke to the top-to-sidewall peripheral junction of the cover of Guggenheim as modified by Dismuke for the purpose of preventing injury to a person colliding with the cart under its covering device, as well as protecting the cart itself, and any stationary object which may be in the path of travel of the cart.

#### **Response to Arguments.**

6. Applicant's comments in their entirety appear to be solely directed to a single issue, namely whether or not the reference to Dismuke is analogous or not. Applicant's arguments with respect to the use of *In re Oetiker* have been carefully considered. The examiner notes that the two fields addressed by *In re Oetiker* were generally directed to hose clamps and garment fasteners, and the examiner would agree that one would be unlikely to look to garment fasteners to solve problem associated with the construction of a hose clamp. In the instant application however, Dismuke is certainly not as categorically far afield, in that it is also directed to a flexible cover designed to be used in conjunction with a wheeled vehicle, and further, interestingly enough, also even directed to the protection of that which underlies the flexible cover.

The examiner notes applicant's comments (page 14 of the response, including the footnote) concerning the differing environments and agrees that a sterile environment and a vehicle work space are not the same, however, in this case, the nature of the device is not specific to the cleanliness of the environment, and the structure of the devices cited and applied are not specifically driven by a particular degree of cleanliness in the envisioned use environment.

The examiner further notes that applicant's own actions in the citation of references deemed pertinent by applicant to the examination of the application in the

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Information Disclosure Statement suggest that devices deemed by applicant to be pertinent to the examination of the application range substantially beyond the maintenance of a sterile environment in that fully 2/3 of the cited references (4 out of 6--namely: Spencer et al., Hughes, Held, and Seymour et al.) are directed to covers applied to golf carts. Certainly these documents are not at all directed to the preservation of a sterile environment, by applicant's logic, but they have been cited by applicant as pertinent to the examination of the instant application.

Note that the base reference to Guggenheim already teaches the importance of the maintenance of a sterile environment inside the cover, and the reference to Dismuke has been applied for the teaching of providing a pocket. In view of Guggenheim's stressing the importance of an interior which is maintained in a sterile condition, it is not deemed to be beyond the skill of the ordinary practitioner to provide a pocket on the interior of Guggenheim's cover, in order to take advantage of the already-taught sterile environment.

### **Conclusion**

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326  
After Final Amendments: 703-872-9327  
Customer Service Communications: 703-872-9325

F. VANAMAN  
Primary Examiner  
Art Unit 3618

  
11/12/04